

## **The Use of Conservation Easements and Other Water Protection Tools Outside of Florida**

A conservation easement is an agreement by which a landowner voluntarily transfers specific development and land use rights to a qualifying nonprofit organization or government agency that will protect the land's natural resources. The land must provide a recognizable public benefit, such as protecting rare species, unique land forms, or public water supplies. Conservation easements are flexible documents tailored to each property and the needs of individual landowners. They may cover an entire parcel or portions of a property. The landowner usually works with the prospective grantee to decide which activities should be limited, to protect specific resources. Landowners retain title to their property and can still restrict public access, farm, or engage in other activities that do not adversely affect the conservation purpose.

An easement may extend for a fixed number of years or perpetually, depending on the agreement. Typically, agreements are in perpetuity. Regardless of the duration of the easement, the agreement is legally binding on future landowners for the agreed-upon time period. As these deed restrictions cover only some of the property rights that are included in fee simple acquisitions, they are frequently referred to as "less than fee" acquisition.

A qualified conservation organization or public agency is usually authorized to monitor and enforce the restrictions set forth in the agreement. Every state has a law pertaining to conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act served as a model for state legislation allowing qualified public agencies and private conservation organizations to accept, acquire and hold less-than-fee simple interests in land for the purposes of conservation and preservation. Since the Uniform Conservation Easement Act was approved, 21 states have adopted conservation easement enabling laws based on this model and 23 states have drafted and enacted their own enabling laws. Accepting donated conservation easements is one of the major activities of land trusts. Land trusts exist in all 50 states. They monitor and enforce the terms of easements. Some also purchase conservation easements.

While conservation easements may directly focus on water quality/quantity issues, these are more typically ancillary benefits for easements that protect natural areas, greenways, swamps, critical species habitat, farmland, or timberland. Most conservation easements require implementation of a management plan for the unencumbered uses of the land to assure they are not detrimental to the protected rights. These management plans normally include best management practices (BMPs), many of which focus on the water requirements of the protected use.

Due to the high costs of fee simple acquisition and the escalating costs of public property management, conservation easements are becoming an increasingly popular tool for environmental protection. This has led to the creation of public and private land trust organizations, as well as federal and state programs to fund easement acquisition. Florida's land acquisition programs are at the forefront in developing innovative less-

than-fee acquisition programs but there are many interesting initiatives across the country. A representative sample of these is briefly categorized below. This listing is not intended to be comprehensive but represents some of the diverse approaches to less than fee acquisition that provide water protection benefits.

## **Federal Programs**

### EPA – Office of Water

New funds from the Safe Drinking Water Act promote EPA's mission to protect public health by ensuring safe drinking water. Land trusts and other local organizations can further this mission by working with state agencies and water suppliers to identify and acquire critical lands and conservation easements.

The 1996 Amendments to the Safe Drinking Water Act make it easier for communities to purchase land or conservation easements for the purpose of protecting public drinking water supplies. The new law provides for annual grants to each state through the year 2003 to fund drinking water programs and projects that protect public health and ensure compliance with the requirements of the Act. However, a state also has the option of designating up to 10% of its federal grant specifically for the acquisition of land and conservation easements, as well as for other source water protection activities.

### U.S. Department of Agriculture

Wetland Reserve Program (WRP) – Voluntary program to restore wetlands. Participating landowners can establish conservation easements of either permanent or 30-year duration, or can enter into restoration cost-share agreements where no easement is involved. In exchange for establishing a permanent easement, the landowner receives payment up to the agricultural value of the land and 100 percent of the restoration costs for restoring the wetlands.

Farmland Protection Program (FPP) – Provides funds to help purchase development rights to keep protective farmland in agricultural uses. USDA provides up to 50 percent of the fair market easement value. A minimum 30-year easement is required, but priority is given to applications for perpetual easements.

Other programs that provide water benefits without establishing an easement include: Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), Emergency Watershed Protection (EWP), Forestry Incentives Program (FIP), and the Wildlife Habitat Incentives Program (WHIP).

## **State Programs**

While conservation easements are used to protect natural acres, many of the lands important for watershed protection are currently under agricultural use. Many states have farmland preservation programs that provide assistance to farmers and ranchers by directing them to agencies or programs that provide funding for conservation easements, or assist with funding for implementation of best management practices that provide environmental and economic benefits. Many of these state programs utilize the Soil and Water Conservation Districts to provide information on conservation programs, conservation easements, and management assistance to promote sustainable agricultural practices.

### Minnesota

The Conservation Reserve Enhancement Program is a state/federal partnership that combines the federal Conservation Reserve Program (CRP) with Minnesota's Reinvest in Minnesota (RIM) Reserve Program to retire up to 100,000 acres of environmentally sensitive land in the Minnesota River watershed. The program's goal is to reduce sediment, phosphorus and nitrogen loading, and flooding in the river; and improve wildlife habitat and recreational opportunities in the river valley. Landowners can voluntarily enroll land in the 15-year CRP contract followed by a RIM Reserve easement (priority will be given to perpetual easements).

The Debt for Nature voluntary program allows Farm Loan Program borrowers with loans secured in real estate to cancel a portion of their FSA indebtedness in exchange for a conservation easement of 10, 30, or 50 years.

The Forest Legacy Program protects and conserves important forest land from conversion to non-forest uses. This protection includes critical watershed functions. Funds are provided by the U.S. Forest Service through the DNR to purchase conservation easements or fee simple ownership from willing sellers.

The Minnesota Land Trust is a membership-based, nonprofit organization dedicated to preserving open space in Minnesota. It offers perpetual conservation easements to protect agricultural land, forested lands, wildlife areas, wetlands, and other scenic or natural lands.

The Permanent Wetland Preserve Program is a state program that offers cash payments to landowners for permanent conservation easements that protect wetlands.

### New Hampshire

In New Hampshire, hundreds of landowners, including farmers, forestland owners, and rural residents, have donated or sold easements on their land for recreation or conservation purposes. This not only helps protect open space, but it can also provide tax benefits to the landowner.

Public agencies, such as town conservation commissions, county conservation districts, and the N.H. Department of Fish and Game, hold easements. Private, non-profit groups, such as the Society for the Protection of New Hampshire Forests, the Audubon Society, The Nature Conservancy, and local land trusts, are also equipped to receive and enforce conservation easements.

Funding for local land conservation and historic preservation projects will soon be available from the state's newly created Land and Community Heritage Investment Program (LCHIP). Funds for purchasing conservation easements are also available through the N.H. Department of Environmental Services' (DES) new Water Supply Land Grant Program. Under the program, DES makes grants to municipalities or non-profit water suppliers for the purchase of land or conservation easements critical to their water quality. These water supply lands must be within the source water protection areas for existing or planned public drinking water sources.

#### New York

The landmark 1007 Watershed Memorandum of Agreement outlines New York City's Land Acquisition and Stewardship Program (LASP), a unique willing seller/willing buyer program through which the City acquires property and conservation easements at fair market value. Lands under conservation easement are not required to be opened for any public access or use, and are still owned by individual landowners.

### **Foundations NGOs and Trusts**

There are numerous foundations and trusts in every state that provide assistance for conservation easements. These frequently include public/private partnerships.

#### American Farmland Trust

This nationwide trust works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.

#### Land Trust Alliance

The Land Trust Alliance is the national organization of land trusts. The Alliance provides specialized services, publications, information and training for land trusts and other land conservation organizations, and promotes public policies that advance land conservation.

#### Buffalo River Stewardship Alliance

The Buffalo River Stewardship Foundation is dedicated to maintaining the water quality of Arkansas' Buffalo National River while respecting the property rights of landowners and farmers. Its conservation easement program supports leasing and purchasing conservation easements along the tributaries to the Buffalo River. These easements establish a forested riparian corridor 100 feet wide, which improves water quality and aesthetic appeal.

#### Montana Land Reliance

The Montana Land Reliance is a private, nonprofit land trust with over 400,000 acres of ecologically important land protected through conservation easements. Conservation of

lands that support agriculture, fish and wildlife resources and open space are their top priority. They provide stewardship assistance and rehabilitation for lands under easement at the request of the landowners.

#### The Conservation Trust for North Carolina

The Conservation Trust for North Carolina has contracted with the North Carolina Department of Agriculture to administer state funded Farmland Preservation Program. Funds cover transactional costs associated with donated conservation easements or provide matching funds for the purchase of development rights on farms. County governments, Soil and Water Conservation Districts, and Land Trusts are eligible to apply for funding.

#### Grand River Partners

Grand Rivers Partners is a citizen-driven land trust working to protect Ohio's Grand River and its tributaries. Funding for this conservation easement program has been made available through an Ohio Department of Natural Resources Natureworks grant and an EPA Great lake Protection Office Grant. They also pool resources of federal, state and local conservation agencies and private conservation groups to assist landowners in designing soil, water, timber and waste management plans.

#### Wetlands America Trust

An affiliate of Ducks Unlimited that accepts easements in perpetuity, as well as accompanying donations to cover associated costs such as monitoring efforts. Such protection ensure that large acreages of wetlands, riparian habitats, and important uplands will be preserved for the benefits of waterfowl and other wildlife and the enjoyment of future generations.

#### The Nature Conservancy

The Conservancy monitors and enforces approximately conservation easements across the United States. They also have a Conservation Land Buyer Program whereby "surplus" lands they have acquired that do not qualify for full protection becomes available for re-sale. These lands are typically sold with either deed restrictions or conservation easements to ensure the land remains unchanged into perpetuity.

### **Private Real Estate Firms Using Conservation Easements**

Live Water Properties in Jackson Wyoming advertises conservation easement use to preserve wild and scenic attributes of ranch properties. This real estate agency focuses on recreational properties used for fly-fishing and other recreational sports. They focus their "efforts on properties that are valid candidates for conservation easements, and we market specifically to individuals with this preservation ethic in mind."